

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10497 OF 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

Whether this case involves a substantial question of
4 law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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NOORMOHAMMED RAJEBHAI KOTWAL & ANR. - Petitioner(s)

Versus

STATE OF GUJARAT & ANR. - Respondent(s)

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Appearance :

Shri P.F. Adhvaryu for Petitioner(s).

Shri Dipen Desai, AGP for Respondent No.1.

Shri S.V. Parmar for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 04/05/2007

ORAL JUDGMENT

The parties are heard.

2. The short facts necessary for disposal of the Writ Application are that the petitioners were carrying on the business of a grocer in grocery items and other provisional items at Mahudi Bhagole, Dabhoi, District: Vadodara. They had entered into a kiosk, a small pacca construction, as tenants and had also obtained a valid license under the Shops and Establishments Act, issued by respondent No.2. According to the petitioners, the shops were not creating any traffic nuisance nor were creating any hindrances to the free flow of traffic. Even then, the respondent No.2 without any authority of law had removed the said construction and had seized the material lying in the said shop. This action was taken on 1st November, 1998. According to the petitioners, the goods are still in possession of respondent No.2 and under the law, they are obliged to return back the goods; they have not returned the same. It is also the case of the petitioners that the petitioners had issued a legal notice through their Advocate, Shri L.B. Kolekar, but, the respondents did not return the goods. The petitioners are praying that the action of the respondents be held to be illegal, respondent No.2 be directed to restore the said construction, a direction be issued to the respondents restraining them from interfering with the possession of the petitioners.

3. Shri Adhvaryu, learned Counsel for the petitioners, in support of the petition, submits that the property belonged to their landlord and without making any enquiry and without appropriate notice to the present petitioners, the respondents could not demolish the construction. So far as the title of the property is concerned, it is the only say of the petitioners that the property belonged to a third party. Neither the said third party has been joined as party respondent or party petitioner, nor the title deed, rent note/lease deed/rent receipt, etc. have been filed on the record. In a case like the present, if the property

belonged to the third party, then, the petitioners were required to join such person as party petitioner or respondent or at least ask such person to provide necessary documents to show that the property belonged to the said third party and was leased out to the present petitioners. In absence of such documents, the petitioners would not be allowed to raise this dispute.

4. So far as the confiscation/forfeiture/seizure of the petitioners' goods are concerned, unfortunately, in the notice issued through the lawyer, full details of the same have not been given. If such details are missing in the legal notice, then, it would not be possible for this Court either to issue a direction to respondent No.2 to return the goods or to pay an amount equivalent to the price of the said goods.

5. It appears that the petition has been wrongly filed in this Court, the petitioners ought to have filed a regular civil suit where they could always raise all these questions and prove to the satisfaction of the Civil Court that they were denuded of their rights to occupy the property and their goods were removed unauthorisedly, they were entitled to possession, so also the price/value of the movables removed by the respondents. This Court, in its jurisdiction under Article 226 of the Constitution of India, would not make a fact finding inquiry.

6. The petition is disposed of with liberty in favour of the petitioners to approach a competent Civil Court in a duly constituted civil suit. They would, however, be entitled to take a respite under Section 14 of the Indian Limitation Act, 1963 that under some legal advice, they had come to this Court and therefore, time spent in these proceedings deserve to be excluded. If such suit with such application or with the pleadings is filed, then, the Court should decide the

issue/application in accordance with law. Rule is discharged. Interim relief, if any, stands vacated. No costs.

[R.S.Garg, J.]

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